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# SUPREME COURT OF THE UNITED STATES

October Term 1964

## No. 372

SAMUEL J. MARROSO,

*Petitioner,*

*vs.*

UNITED STATES OF AMERICA,

*Respondent.*

## PETITION FOR REHEARING OF ORDER DENYING PETITION FOR WRIT OF CERTIORARI

J. EDWARD WORTON,
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SAMUEL J. MARROSO,
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Miami, Florida 33131

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## PETITION FOR REHEARING OF ORDER DENYING PETITION FOR WRIT OF CERTIORARI

TO the HONORABLE EARL C. WARREN,
Chief Justice and the Associate Justices of
the Supreme Court of the United States:

Your petitioner, SAMUEL J. MARROSO, respectfully prays for a rehearing of the Order of this Court dated November 9, 1964 denying his Petition for a Writ of Certiorari and that a writ of certiorari be issued to review the judgment of the Court of Appeals for the Fifth Circuit in the above entitled case.

## REASONS FOR GRANTING REHEARING AND ISSUING THE WRIT OF CERTIORARI

1. This Honorable Court granted a writ of certiorari on October 13, 1964, in the case of **DOUGLAS** v. **ALABAMA**, No. 313, October Term 1964, 33 U. S. Law Week 3144.

This petitioner respectfully submits that the constitutional question to be resolved by this Court in **DOUGLAS** v. **ALABAMA**, supra, **directly affects** and **bears** upon the constitutional question presented by this petitioner in his Petition for a Writ of Certiorari dated August 7, 1964.

Thus, the rehearing prayed for here should be granted, since the constitutional question pending before this Court in **DOUGLAS** v. **ALABAMA**, supra, has not been determined and petitioner is without further recourse to determine the abridgment of his constitutional rights which will result in his incarceration.

2. Certiorari was confined to the following question in **DOUGLAS** v. **ALABAMA**, supra:

> "Is the defendant in a criminal trial deprived of due process of law when the prosecutor knowingly calls an alleged accomplice to the stand to secure from him a refusal to testify and when his presence on the stand is used as a pretense for reading to the jury an alleged confession of the witness which is inadmissible against the defendant."

3. Although the facts in **DOUGLAS** v. **ALABAMA**, supra, differ from those in the instant case, the basic constitutional question involved remains the same.

Specifically, the right of the petitioner here to exercise his Fifth Amendment privilege against self-incrimination coupled with Section 3481 of Title 18 United States Code, which together include complete freedom from "prejudicial and inflammatory" comment during the petitioner's criminal jury trial.

4. The petitioner here was denied his constitutional rights when the trial court, over objection, allowed the prosecutor and a government witness to comment on the fact that the petitioner had exercised his privilege against self-incrimination. Therefore, the petitioner's right to a "fair trial" under the Sixth Amendment has also been denied.

5. In **DOUGLAS** v. **ALABAMA**, supra, a convicted accomplice was called to the stand by the prosecutor who knew the accomplice would refuse to testify.

Whereas, here the glaring error of the constitutional violation against petitioner MARROSO is far more blatant because both the prosecutor and the government witness commented on the petitioner's exercising his privilege against self-incrimination during the jury trial.

6. It is respectfully requested that this Honorable Court should consider the merits of the Petition for Rehearing of Order Denying Petition for Writ of Certiorari filed by SAMUEL J. MARROSO separately and apart from the petition of JOHN JACOB SAMARIN.

## CONCLUSION

For the reasons set forth above and in the Petition for Writ of Certiorari, it is respectfully urged that rehearing be granted and that, upon such rehearing, a writ of certiorari be issued to the Court of Appeals for the Fifth Circuit.

Respectfully submitted,

J. EDWARD WORTON
Attorney for
SAMUEL J. MARROSO,
Petitioner
548 Pan American Bank Bldg.
Miami, Florida 33131

## CERTIFICATE OF COUNSEL

I HEREBY CERTIFY that the foregoing Petition for Rehearing is presented in good faith and not for delay and is restricted to grounds specified in Rule 58 of the rules of this Court.

J. EDWARD WORTON

## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that several copies of the above and foregoing Petition for Rehearing of Order Denying Petition for Writ of Certiorari was on this the 27 day of November, 1964, mailed to the Hon. William A. Meadows, United States Attorney for the Southern District of Florida, United States Courthouse, Miami, Florida; to Jerome Nelson, Attorney, Dept. of Justice, Washington 25, D. C.; and to the Solicitor General, Department of Justice, Washington 25, D. C.

J. EDWARD WORTON